

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed July 6, 2009. Currently, claims 1, 3-10, and 12-32. Claims 1, 3-10, and 12-32 have been rejected and claim 17 was objected to. Claim 17 has been amended as requested. Claims 22 and 32 have been canceled rendering the objection to the drawings moot. Favorable consideration of the following remarks is respectfully requested.

### **Claim Rejections – 35 USC § 103**

Claims 1, 4-10, 14-16, 18, 19, and 23-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski (U.S. Patent No. 6,579,305) in view of Fischell et al. (U.S. Patent No. 5,976,153), hereinafter Fischell. After careful review, Applicant must respectfully traverse this rejection.

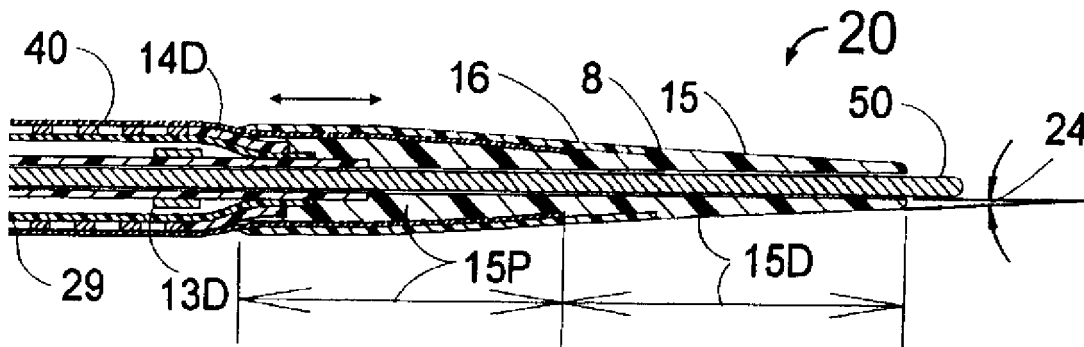
With respect to independent claim 1, Lashinski does not appear to disclose an “inner tube further comprising a distal tip having a proximal edge defining an edge diameter” or “wherein the edge diameter and distal end diameter are equal to or greater than a maximum diameter of the stent in an unexpanded form” and the latter deficiency is explicitly acknowledged by the office action. As will be seen in each of Figs. 2-7, the inner tube of Lashinski appears to be of constant outer diameter with the possible exception of a short tapered tip of reduced diameter. Thus any stent disposed over the inner tube necessarily would appear to have an outer diameter greater than the stent’s inner diameter and so Lashinski appears incapable of providing at least the inner tube recited in claim 1, as well as of claims 14, 23, and 27 to be discussed later.

The office attempts to overcome the acknowledged deficiency of Lashinski by asserting that Fischell discloses an inner tube (12) having a distal tip (24) with a proximal edge diameter and characterizes the edge of the tip as follows:

“(not edge where sheath abuts distal tip as well as edge where radiopaque marker (13d) abuts distal tip)” (sic)

Initially, it must be noted that reference numeral (24) of Fischell appears to denote “an average taper angle 24 that is typically less than 4 degrees” rather than a tip. It will be assumed that the office intended to specify elastomer distal tip (15). If this is not correct,

the office is invited to provide a correct designation in a future nonfinal office action. At that time Applicants would appreciate clarification of which edge of the distal tip was intended to provide the proximal edge diameter since the current text of the Office Action appears to indicate that the office did not intend to specify either edge mentioned – neither the edge which abuts the sheath nor the edge which abuts the radiopaque marker. It is currently believed that the question may be moot given a more careful examination of the tip as depicted in Fig. 1 which is reproduced in part below.



**FIG. 1**

That portion of tip (15) of Fischell indicated by the added double-headed arrow above proximal section (15P) appears to provide the maximum diameter of tip (15). Measurement of the relevant portions of the image indicates that the tip has a diameter which is approximately 80% of the outer diameter of the stent (40) in its unexpanded state and approximately 96% of the inner diameter of the stent. Accordingly, no portion of the tip (15) appears to provide an edge having an edge diameter which is greater than or equal to the maximum outer diameter of the stent in question and all portions of the tip (15) appear to be of lesser diameter than the inner diameter of the stent. Accordingly, Lashinski in view of Fischell does not appear to overcome the deficiencies of Lashinski with respect to independent claims 1, 14, 23, and 27 and Applicants respectfully request that the rejections be withdrawn.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03)

Accordingly, claims 4-10, 15, 16, 18, 19, and 24-26, which depend from nonobvious independent claims 1, 14, and 23, also are believed to be nonobvious and Applicants respectfully request that the rejections be withdrawn.

Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski in view of Fischell and further in view of Rabkin et al. (U.S. Patent No. 6,579,305), hereinafter Rabkin. After careful review, Applicant must respectfully traverse this rejection.

Claim 21 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski in view of Fischell and further in view of Healey et al. (U.S. Patent No. 6,607,553), hereinafter Healey. After careful review, Applicant must respectfully traverse this rejection.

Claim 22 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski in view of Fischell and further in view of Layne (U.S. Patent No. 6,096,027). After careful review, Applicant must respectfully traverse this rejection.

Claims 3, 12, 13, 20, and 27-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski in view of Fischell and further in view of Kasprzyk et al. (U.S. Patent No. 5,035,694), hereinafter Kasprzyk. After careful review, Applicant must respectfully traverse this rejection.

Claim 30 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski in view of Fischell and Kasprzyk and further in view of Rabkin. After careful review, Applicant must respectfully traverse this rejection.

Claim 31 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lashinski in view of Fischell and further in view of Healey et al (U.S. Patent No. 6,607,553), hereinafter Healey. After careful review, Applicant must respectfully traverse this rejection.

Each of the above rejections, with the exceptions of the rejections of claims 27 and 30, appears to rely upon Lashinski in view of Fischell to provide basic structure to which various elements found only in dependent claims have been added. Accordingly, the additional elements provided do not appear to overcome the deficiencies of Lashinski

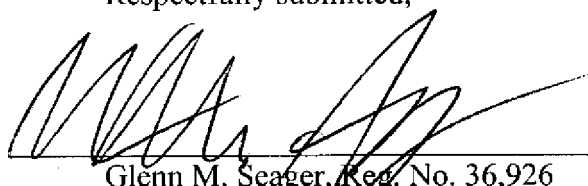
in view of Fischell as identified above. The cool saline of Rabkin does not appear to overcome the structural deficiencies of Lashinski in view of Fischell noted above when applied to independent claim 27. Accordingly, independent claim 27 appears to remain nonobvious.

Claims 3-10, 12, 13, 15-21, 24-26, and 28-31, which depend from nonobvious independent claims 1, 14, 23, and 27, also are believed to be nonobvious and Applicants respectfully request that the rejections be withdrawn.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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Sept 29, 2009 

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